

A G Contract No KR02- 1833TRN
ADOT ECS File: JPA 02-83
Project No : STP-000-6(164)P
TRACS: 0940 GE CLF SR184 01C
Section: 7th Street
AAR/DOT No 741-890-H

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF CLIFTON

THIS AGREEMENT is entered into January 23rd, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF CLIFTON acting by and through its MAYOR and TOWN COUNCIL, (the "Town")

I. RECITALS

1 The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State

2 The Town is empowered by Town Charter, Chapter II, Section 2 (I) to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3 Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances

4 Such project within the boundary of the Town, has been selected by the Town, the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval

5 The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended

NO. 25757
Filed with the Secretary of State
Date Filed: 01/23/2003

Janice K. Brewer
Secretary of State

By: Timothy D. Graenewald

6 The work embraced in this agreement and the estimated cost is as follows: Upgrade Railroad Crossing (7th Street).

Preliminary and Construction Engineering	\$ 15,000 00
Furnish and Install Flashing Lights and Gates (By railroad forces)	\$152,949.00
Total Protection work	\$167,949 00
Furnish and Install a Concrete Crossing Surface	
Total Surface Work (By railroad forces)	\$ 55,675.00
Estimated Total Project Cost	\$223,624.00
Federal Aid Funds @ 100% of \$223,624 00	\$223,624.00
Town of Clifton Funds	\$ 0.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1 The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the Town's deposit unless and until so authorized in writing by the Town.

2 The Town shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired

3 Once acquired, the Town shall remove from the Town right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from.

4 The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the Town right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

5 Upon completion of construction, the Town shall provide like JPA 01-106 (exclusive of maintenance by the Railroad Company of its facilities), which may include, but is not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic

6 The Town shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the Town.

7 By such regulation as it may by ordinance provide, the Town shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict

III. MISCELLANEOUS PROVISIONS

1 The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the Town for the benefit of the State in no way acts as a waiver by the Town for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The Town shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The Town shall also require its contractors to name the State as an additional indemnitee in the Town's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2 The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by FHWA, the Town agrees to furnish and provide the State with Town funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received, if applicable.

3 This agreement shall remain in force and effect until completion of the work herein embraced, provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4 This agreement shall become effective upon filing with the Secretary of State.

5 This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6 The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7 In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8 All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Town of Clifton
Town Manager
Box 1415
Clifton, AZ 85533

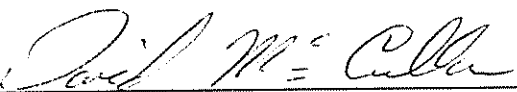
9 Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

TOWN OF CLIFTON

STATE OF ARIZONA

Department of Transportation

By 
DAVID McCULLAR
Mayor

By 
SUSAN TELLEZ
Contract Administrator

ATTEST:

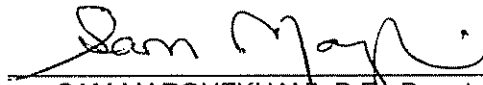
By 
ESPERANZA CASTANEDA
Town Clerk

JPA 02-83

RESOLUTION

BE IT RESOLVED on this 18th day of September, 2002, that I, the undersigned VICTOR M. MENDEZ, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Town of Clifton for the purpose of defining responsibilities for the construction of railroad crossing gates and flashers at 7th Street, for the benefit and safety of the traveling public.

Therefore, authorization is hereby granted to draft said agreement, which, upon completion, shall be submitted to the Staff Engineer for approval and execution.

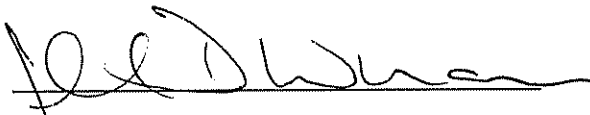


SAM MAROUFKHANI, P.E., Deputy State Engineer
Development / Intermodal Transportation Division
for VICTOR M. MENDEZ, Director

APPROVAL OF THE TOWN OF CLIFTON ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF CLIFTON and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 20th day of December, 2002



Attorney

**Minutes
Town of Clifton
Regular Town Council Meeting
December 12, 2002
7:02 p.m.**

Members Present

Mayor David McCullar
Vice-Mayor Robert Schaller
Council member Mary Beager
Council member Pete Castaneda
Council member Mike Mitchell
Council member Armida Moir
Council member Maria Portillo

Consent Agenda: Council member Armida Moir made a motion to approve the following items as listed under consent agenda:

1. Approval of the November 14, 2002 Regular Meeting Minutes
2. Approval of Department Reports;
3. Approval of Demands

The motion was seconded by Council member Mary Beager. Motion carried.

Call to the Public:

John Decker supported the council on their recent action to seek a new town manager.

Council member Mary Beager stated that the Chamber of Commerce is trying to bring back the Phelps Dodge Mine tours.

Tom King, representing the Copper Era, inquired as to the total cost of the recent investigation on Chief Stockton.

Mayor McCullar responded that the information was not available at this time.

New Business

Discussion and/or action to allow the Mayor to be absent from the town for a greater period of 15 consecutive days. (Clifton Town Code; Chapter 2; Section 2-2-5): Mayor McCullar explained that he would be out of town for the holiday season. Council member Mary Beager made a motion grant the request. Motion was seconded by Council member Maria Portillo. Motion carried.

Discussion and presentation of the Annual Financial Report for Fiscal Year 2002: Town Clerk, Espie Castaneda provided the council with a copy of the report as well as the nonreportable conditions and immaterial instances of noncompliance. These issues were found in payroll; bidding and fixed assets.

Also covered in the presentation was the expenditure limitation report. It was noted that the town had expended \$1,225,170. The amount subject to the expenditure limitation for this year was \$1,585,561.

Discussion and/or action to authorize the Mayor to execute the Intergovernmental Agreement between the State of Arizona acting by and through its Department of Transportation and the Town of Clifton regarding Project No. STP-000-6(164)P, 7th Street Upgrade Railroad Crossing: Vice-Mayor Robert Schaller made a motion to authorize the Mayor to execute the agreement contingent upon the review and approval of the town attorney. Motion was seconded by Council member Mary Beager. Motion carried.

Discussion and/or action to propose a one time override of the expenditure limitation for FY 2003-2004 to the voters of the Town of Clifton: Council member Armida Moir made a motion to propose a one-time override of the expenditure limitation for FY 2003-2004. Motion was seconded by Vice-Mayor Robert Schaller.

Members of the council inquired as to the change to seek a one-time override vs. the planned permanent base adjustment.

Town Clerk, Espie Castaneda explained that a permanent base adjustment may only be presented to the voters at a state general election or at the town's regular election. Both of these dates were not options under the town's election cycle. Therefore, the only other option would be to seek another one-time override. Council will have to consider the permanent base adjustment or home rule during its regularly scheduled election cycle.

Motion carried.

Discussion and/or action regarding contract provisions for an Interim Town Manager: Mayor David McCullar requested input from the council regarding contract provisions for an interim town manager. He explained that these details should be ready to offer a potential candidate prior to his/her appointment. He also cautioned that in the absence of a contract, the town codes ordinance provisions would apply to the next town manager.

Council member Pete Castaneda expressed concern on recent advice from the town attorney regarding making a personnel investigative report available to more than one Interim Town Manager.

Vice-Mayor Robert Schaller suggested a 60-day contract renewal provision and compensation based on \$36,000.00 as covered under the town's budget.

Vice-Mayor Schaller made a motion to instruct the town attorney to prepare a contract to include the 60

day renewal provision and \$36,000.00 salary amount.

Motion was seconded by Council member Maria Portillo. Motion carried.

Discussion and/or action on appointing an Interim Manager and or consultant. - Council member Mary Beager: Council member Mary Beager explained that she had requested that this item be addressed without delay.

Mayor McCullar reported that he had received three resumes of interested individuals. He mentioned that the applicants were Aida Lopez, Joe Jenkins, and Barbara Ahmann.

Council member Pete Castaneda stated that he would like to see the vacancy advertised prior to making a decision.

Also present was David Newlin, Town Manager of Duncan. He offered his services to the town on an interim basis. He explained that the Duncan Town Council would have to agree to the interim service. He also addressed the concern about a potential conflict of interest between the town agencies.

Also addressing the council were Aida Lopez and Joe Jenkins. They presented their resumes and interests in the position as interim town manager.

Mayor McCullar thanked the applicants for their interest and explained that their resumes would be accepted along with any other applicants that may file their resumes for the announced position.

Mayor McCullar reiterated that whomever is appointed as the interim town manager must have knowledge of the investigative report regarding the Chief of Police. He stated that the manager must be aware of the information prior to making a decision regarding this personnel matter. The content of the report will remain confidential as per the open meeting laws pertaining to executive session.

Council member Mike Mitchell made a motion to appoint David Newlin as the Interim Town Manager pursuant to the approval of the Town of Duncan.

Motion was seconded by Council member Armida Moir.

Members of the council voting in favor of the motion were: Councilmembers' Mitchell, Moir, Beager and Schaller.

Opposing the motion were Councilmembers' Castaneda and Portillo

Motion carried.

Adjournment: Motion to adjourn was made by Council member Pete Castaneda. Motion was seconded by Council member Armida Moir. Motion carried.

Regular Meeting Minutes - December 12, 2002
Page 4

Meeting adjourned at approximately 8:06 p.m.



JANET NAPOLITANO
ATTORNEY GENERAL

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION
1275 WEST WASHINGTON STREET, PHOENIX, AZ 85007-2926

TRN Main: (602) 542-1680
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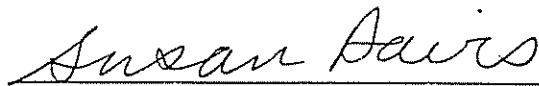
INTERGOVERNMENTAL AGREEMENT **DETERMINATION**

A.G. Contract No. KR02-1833TRN (JPA 02-83), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED January 13, 2003.

JANET NAPOLITANO
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/srs

Att.